

REMARKS

The applicant herein adds new claim 21, and has amended claims 3, 4, 13, 14 to depend therefrom. The remaining claims have been cancelled without prejudice. Claim 21 has drafted amended to clarify the structure of the claimed invention and to reflect the subject matter deemed allowable in the corresponding European Patent Application, a copy of the correspondence related to which is submitted in the accompanying information disclosure statement.

The applicant respectfully submits that the clarifying amendments addresses those rejections raised by the Office in the previous Office Action without adding new subject matter, specifically clarifying the nature of weld 9 of Fig. 2F. The applicant respectfully submits that at least for these reasons, the claimed invention of claim 21 and those claims dependant therefrom are patentably distinct from the references cited in the Office Action. The Applicant therefore respectfully requests that the Office withdraw allow the claimed invention.

The applicant herein incorporates the remarks from the previous response, which were not entered.

Claims Rejections - 35 USC §102(b)

The Office rejected claims 1-4, 13 and 14 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,524,460 to Twiehoff et al. The applicant has carefully reviewed the cited '460 reference and respectfully disagrees. The applicant has substituted new claim 21 for claim 1 to further clarify the distinction between the claimed invention and the cited reference. The claim amendments are supported by the specification and clarify issues discussed in previous Office Action Responses to which the office alludes in its Response to Arguments.

A rejection based on anticipation requires that a single reference teach every element of the claim (MPEP § 2131). "The identical invention must be shown in as complete detail

as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Or stated in another way, a "claim is anticipated only if each and every element as set forth in the claim is found, . . . described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . .

In contrast to the claimed invention, the cited reference fails to disclose a seal(s) that joint each layer of the multilayer design in the configuration of the claimed invention. Instead, as illustrated in the below reproductions of figures from the claimed invention, and the cited reference, the cited reference fails to disclose the presence of a seal between the inner and outer films.



Fig. 4, '460 reference

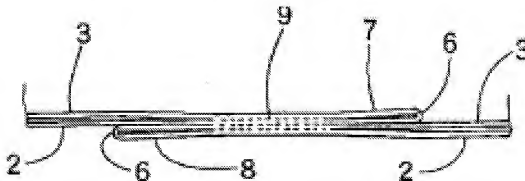


Fig. 2F of the Claimed invention

The applicant notes that the bonds of the cited reference, 20, 19 are of pressure sensitive adhesive and are only between the outer layer and the inner layer of the side opposite to it. The applicant further notes that structures 17 and 18 are not actually part of the films, but are "two overlapping strips" of reduced thickness.

In contrast, the claimed invention provides seals between layers 2 and 3, between 3 and 2, and between 2 and 3. This layering of the seals creates a physically thick seal that has improved overall performance and a reduced risk of pin holes. This structure is wholly absent from the cited reference.

At least for this reason, the applicant respectfully submits that new claim 19 and those claims dependant therefrom, are patentably distinct from the cited '460 reference. The applicant respectfully requests that the Office withdraw its rejection of claims dependant therefrom.

Claim Rejections – 35 USC § 103

The Office has quoted the statute from 35 USC 103(a), which is referenced herein. The Office has rejected claim 11 and 12 as being unpatentable over Twiehoff et al. and U.S. Patent No. 3,939,972 to Mayworm. The applicant has replaced claims 11 and 12 with new claims 22 and 23, the subject matter of which is consistent with those claims replaced, and which do not raise new issues as the elements are merely clarifications of elements presented and discussed in the previous Office Action Response and alluded to by the Office in its Response to Arguments.

Applicant has carefully considered the Office rejections and respectfully submits that the amended claims, as supported by the arguments herein, are distinguishable from the cited reference.

According to the MPEP §2143.01, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art."

A useful presentation for the proper standard for determining obviousness under 35 USC §103(a) can be illustrated as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue;
3. Resolving the level of ordinary skill in the pertinent art; and
4. Considering objective evidence present in the application indicating

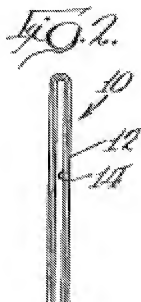
obviousness or unobviousness.

As noted above, the '460 reference fails to disclose the claimed seal structure, instead relying upon pressure sensitive adhesives applied between only the inner and outer films of opposing sides, rather than seals of multiple layers. The '972 reference does not, nor does the Office allege, that it discloses such a structure. At least for this reason, the Office has failed to provide ground for a rejection based on 35 USC 103.

The applicant further notes that the cited '972 reference fails to disclose the claimed structure for either the seals, or for the films. The Office dismisses the films' construction as a mere design choice, and alleges that the Applicant did not address this issue in the previous response. The applicant respectfully submits that neither is the case. While the applicant did not directly address the Office's allegation, the applicants rebuttal regarding the Office's allegations relating to the '460 reference addressed the structure, without which the '972 reference is manifestly inapplicable.

Further the applicant notes certain factual errors with regard to the Office's allegations. First the Office alleges that the '972 reference discloses "a co-extrusion layer having a polyolefin layer in both sides of the core layer. This is incorrect. The '972 reference discloses at a three layer construction, not the three layer construction of the claimed invention with the exterior layers the same (polyolefin-core-polyolefin). On the contrary,

the '972 reference notes "Any type of polymer may be used for the inner laminate, to the extent permitted by the coextrusion process, **provided only that the outer laminate is composed of a material that is heat sealed.**" The applicant submits that such a structure would not be suitable for the claimed invention. If such a construction were within the skill of one in the art, the Office would certainly be able to obtain a reference to support such an allegation. As it is the '972 reference simply does not.



The applicant draws the Office's attention to the above detail from the '972 reference's Fig. 2- two layers 12 and 14 are disclosed. The interior and exterior laminates are defined by the bag, not the laminated structure. The '972 reference sought to obtain an internal surface suitable for heat sealing and a printable external surface. (Abstract) This requires two different exposed surfaces 12 and 14, in contrast to the claimed polyolefin layers on either sides of the core which would produce faces of the same material on either side of the structure. "The material of the interior laminate 14 may generally comprise any polymer having a higher softening fusion temperature than the outer laminate 12 and is selected on the basis of the properties desired in the final product, irrespective of

the autoadhesiveness or the ability of the material to form heat seals, provided that the material can be coextruded with the material of the outer laminate.” On its face, the ‘972 reference teaches away from the structure of the claimed invention, requiring 2 different materials.

Regarding the Office’s allegations regarding claim 12, the applicant respectfully incorporates its above remarks. The applicant does not admit the Office’s allegations regarding the references cited, and interpreted the Office’s previous remarks to be mere summary statements rather than as seemingly intended Office Notice. The applicant respectfully notes that even with the Office’s suppositions with regard to the cited references, the cited references, alone or in combination fail to disclose the claimed invention.

Applicant believes the above amendments and remarks to place this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,

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